



THE ATTORNEY GENERAL
OF TEXAS

Gerald C. Mann

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

Honorable Luther C. Johnson
County Attorney
Anderson County
Palestine, Texas

Opinion No. O-4914

Re: Is a vote of a majority of the members of the county executive committee required to select the democratic nominee to be placed upon the ballot of the general election or would a vote of a majority of the members of the committee present at the meeting be sufficient to select the party nominee where the nominee selected by voters at the primary election declines the nomination prior to the general election?

Dear Sir:

We have your telegram of October 13, 1942, requesting the opinion of this department on the above stated question.

Article 3165, Vernon's Annotated Civil Statutes, provides:

"A nominee may decline and annul his nomination by delivering to the officer with whom the certificate of his nomination is filed, ten days before the election, if it be for a city office, and twenty days in other cases, a declaration in writing, signed by him before some officer authorized to take acknowledgements. Upon such declination (or in case of death of a nominee), the executive committee of a party, or a majority of them for the State, district or county, as the office to be nominated may require, may nominate a candidate to supply the vacancy by filing with the Secretary of State in the case of State or district officers, or with the county judge in the case of county or precinct officers, a certificate duly

signed and acknowledged by them, setting forth the cause of the vacancy, the name of the new nominee, the office for which he was nominated and when and how he was nominated. No executive committee shall ever have power of nomination, except where a nominee has died or declined the nomination as provided in this article."

We have failed to find any case by any of the Appellate Courts construing the above mentioned statute wherein the question herein involved has been discussed or passed upon. However, the case of Walker, et al v. Hopping, 226 S.W. 146, construing a similar provision of Article 3107, Revised Statutes, 1911, (now Article 3118, Vernon's Annotated Civil Statutes) among other things, holds in effect that a statute providing that a vacancy in the office of chairman or member of the county committee of a party shall be filled by a majority vote of the executive committee, contemplates an act of the committee as a body, and, in the absence of some provision of law to the contrary, it would take a majority of the members of such committee to constitute a quorum which could act as the committee.

It is stated in Words and Phrases, Permanent Edition, Volume 26, page 103:

"In construing a party rule giving the executive committee of the party the power to fill vacancies on the county ticket by a majority vote of all the executive committee, it was said by the court that it seems clear, taking the whole rule together, that the provisions for filling vacancies on the ticket by a 'majority of all the executive committee' means, at the least, a majority vote of all the persons who are in fact members of the committee at the time the vacancy is filled. Ordinarily the phrase quoted might not receive such construction. We have so decided in two cases recently before us, but, of course, the question in every case is, What do the words mean in a particular connection, and under the particular circumstances? In general, they mean a majority of the quorum (the quorum being a majority of the whole body), but when the rule provides for a different test, such decisions ceased to apply."

In view of the foregoing, it is our opinion that in the absence of some provision of law to the contrary, a majority of the members of an executive committee of a party constitutes a quorum which can act as the committee. In other

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words, if a majority of the members of the executive committee of a party are present, it will take a majority vote of those present to nominate a candidate.

Trusting that the foregoing fully answers your inquiry, we are

Very truly yours

ATTORNEY GENERAL OF TEXAS

By

s/ Ardell Williams
Ardell Williams
Assistant

APPROVED Oct 14, 1942
s/ Grover Sellers
First Assistant Attorney General

AW:db:bt

Approved Opinion Committee
by RWF, Chairman